

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 196 of 2020**

- Geeta Thakur, W/o- Late Shri Ganesh Thakur, Aged About- 38 Years, R/o- Ranjhi Bade Patthar, Police Station Ranjhi, District- Jabalpur, Madhya Pradesh. **---- Appellant**

Versus

- State Of Chhattisgarh, Through: Station House Officer, Police Of Police Station Bodhghat, District- Bastar, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Ashok Kumar Komra, Advocate
For Respondent/State	:	Shri Dinesh Tiwari, Dy. G.A.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

19.01.2021

1. This appeal arises out of the judgment of conviction and order of sentence dated 27.01.2020 passed by the Special Judge, NDPS, Jagdalpur, District Bastar (C.G.) in Special Criminal Case (NDPS Act) No. 23/2017, convicting the accused/appellant for the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and sentencing her to undergo rigorous imprisonment for 2 years with fine of Rs.10,000/-, in default of payment of fine to further undergo rigorous imprisonment for 2 months.
2. Case of the prosecution in brief is that on 08.05.2017, PW-14 Sub Inspector- Johncruish Toppo, received a secret information from the informant that three women aged about 38 years and 50 years

are carrying *Ganja* in separate bags near Atithi Hotel at passengers waiting room, the said information was reduced to writing vide Ex.P-1 and Ex.P-2, he informed superior authority vide Ex.P-25. Independent witnesses namely Sanni Bharti and Raghuvir were summoned vide Ex.P-3. The police party along with the witnesses went to the spot, apprehended the accused/appellant, gave her notice vide Ex.P-5 under Section 50 of the NDPS Act and made her aware of her legal rights, on which she consented to be searched by the police officer. Personal search of the police party and the witnesses was also made by the appellant. On which nothing objectionable was recovered from them vide Ex.P-6. However, on search of the appellant being made two bags containing *Ganja* like substance were recovered vide Ex.P-7 and Ex.P-8. The said contraband was identified as *Ganja* by smelliing and burning vide contraband identification panchnama Ex.P-9. On weighment being done of the contraband, it was found to be 8 Kg and two samples, each of 50 gms, were drawn from the said contraband vide Ex.P-11, specimen seal punchnama was prepared vide Ex.P-14 and the bags as well as the samples were seized and sealed vide Ex.P-15. Information regarding the entire proceedings was forwarded to CSP, Jagdalpur vide Ex.P-33, FIR vide Ex.P-29 was registered against the appellant under Section 20 of the NDPS Act. The accused/appellant was arrested vide Ex.P-16. The remaining contraband was deposited in Malkhana. Samples were sent to FSL for chemical examination and as per the report of FSL Raipur,

the seized contraband was confirmed to be Ganja vide Ex.P-32. After investigation, charge sheet was filed against the accused/appellant under Section 20 (b) of the NDPS Act. The trial Court framed charge under Section 20(b)(ii)(B) of the NDPS Act against the accused/appellant which was denied by her and she prayed for trial.

3. The prosecution examined 14 witnesses in support of its case i.e. PW-1 Sanni Bharti, PW-2 Sub Inspector Surendra Singh Baghel, PW-3 Constable Hemant Kumar Thakur, PW-4 Raghuveer Dongar, PW-5 Asst. Sub Inspector Dhurvbeer Ram Yadu, PW-6 Asst Sub Inspector Jagdish Singh Thakur, PW-7 Asst Sub Inspector Babulal Das, PW-8 Constable No. 1186 Narayan Kumar, PW-9 Asst Sub Inspector Kanchan Thomas, PW-10 Constable Vinod Netam, PW-11 Constable Chaituram Netam, PW-12 Station House Officer/Inspector Shri Saed Akhtar , PW-13 Head constable Chandar Singh Mandavi and PW-14 Sub Inspector Johncruise Toppo. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which she denied the incriminating circumstances appearing against her in the prosecution case, pleaded innocence and false implication. However, no witness was examined by her in her defence.
4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as

mentioned above.

5. Learned counsel for the appellant submits that the trial Court without appreciating the overall evidence available on record has wrongly convicted the appellant by the impugned judgment. No independent witnesses in this case has supported the prosecution case. There are major contradictions and omissions in the statements of the prosecution witnesses. The mandatory provisions of the NDPS Act for conducting search and seizure have not been complied as required under the law. In these circumstances, conviction of the appellant under Section 20 (b) (ii) B of the NDPS, Act and sentence imposed thereunder by the trial Court are liable to be set-aside.

Alternatively, learned counsel for the appellant submits that if this Court ultimately comes to the conclusion that the appellant has rightly been convicted by the trial Court, considering the fact that the incident took place way back in the year of 2017, the appellant is a poor lady of 38 years having three children, she is the first offender and has no criminal antecedents, there is no one to look after her family, she has already remained in jail for about 1 year 10 months 17 days the jail sentence may be reduced to the period already undergone by her and the fine amount may also be suitably reduced.

6. On the other hand learned State counsel supporting the impugned judgment submits that trial Court considering all the relevant

aspects of the matter has rightly convicted and sentenced the appellant which needs no interference by this Court.

7. Heard learned counsel for the parties and perused the material available on record.

8. PW-14 Sub Inspector- Johncruise Toppo, investigating officer, has stated in his deposition that on 08.05.2017 after receiving secret information that three women carrying *Ganja* in their possession are waiting in the passengers waiting room near Atithi Hotel, recorded the same in the Rojnamcha sanha vide Ex.P-1 & Ex.P-2, informed about the same to his authorities Ex.P-25, summoned the witnesses namely Sanni Bharti and Raghuveer Donger Ex.P-3 and thereafter proceeded with the staff and the witnesses to the indicated place. There he found the appellant standing with two bags of which she was given notice under Section 50 of NDPS Act Ex.P-15 and after obtaining her consent, the bags carried by the appellant were searched and contraband *Ganja* was recovered from it. On weighment being done, it was found to be total 8 KG, vide Ex.P-11 from which four samples each of 50g were drawn, the samples and the remaining contraband were seized and sealed. The seized samples were sent to FSL for chemical examination. The appellant was arrested, the proceedings were recorded in Dehati Nalisha Ex.P-28, FIR Ex.P-29 registered under Section 20 B of the NDPS Act against the appellant. As per FSL report Ex.P-32 contraband was confirmed to be *Ganja*. There is no

reason to disbelieve the evidence of this witness as he has remained firm during his cross-examination.

9. PW-9 Assistant Sub Inspector- Kanchan Thomas has supported the evidence of PW-14 Johncruise Toppo on material particulars. In her cross-examination she also remained firm. PW-1 Sanni Bharti and PW-4 Raghuvir Dongar independent witnesses, have though admitted their signatures on the documents vide Ex.P-1 to Ex.P-16 but they have not supported the prosecution case.

10. PW-2 Sub Inspector- Surendra Singh Baghel, has also admitted the fact that after receiving secret information by PW-14 Johncruise Toppo, he alongwith PW-14 Johncruise Toppo and police staff as well as two independent witnesses proceeded to the indicated place, apprehended the appellant and from her possession *Ganja* was seized. PW-3 constable- Hemant Kumar Thakur, has also supported the evidence of the investigating officer PW-14 Johncruise Toppo. PW-4 Raghuvir Dongar, Auto Driver though admitted his signatures on the documents vide Ex.P-1 to Ex.P-16 but has not supported the prosecution case and turned hostile.

11. PW-5 Assistant Sub Inspector- Dhurbeer Ram Yadu, PW-6 Assistant Sub Inspector- Jagdish Singh Thakur and PW-7 Assistant Sub Inspector- Babulal Das have duly supported the prosecution case. PW-10 Constable- Vinod Netam has proved submission of report of the entire proceedings in the office of CSP, Jagdalpur. PW-11 Constable- Chaituram Netam working in the office of CSP, Jagdalpur has proved receiving of the information of the crime obtained from informant, panchnama regarding non-obtaining of warrant as well as the detailed report of the proceedings conducted by the investigating officer in the office of CSP, Jagdalpur. PW-12 Station House Officer/Inspector- Shri Saeed Akhtar recorded statements of the witnesses and wrote a letter to the Tahsildar for preparing spot map vide Ex.P-23. PW-13 Head Constable- Chandar Singh Mandavi has proved receiving of the seized articles including

the samples in the malkhana.

12. True it is that the independent witnesses in this case namely Sanni Bharti and Raghuvir Dongar have not supported prosecution case and turned hostile but they have admitted their signatures on the documents vide Ex.P-1 to Ex.P-16. It is equally true that the other witnesses, though police personnel being PW-5 Asst. Sub Inspector Dhurvbeer Ram Yadu, PW-6 Asst Sub Inspector Jagdish Singh Thakur, PW-7 Asst Sub Inspector Babulal Das, PW-8 Constable No. 1186 Narayan Kumar, PW-9 Asst Sub Inspector Kanchan Thomas, PW-10 Constable Vinod Netam, PW-11 Constable Chaituram Netam, PW-12 Station House Officer/Inspector Shri Saeed Akhtar , PW-13 Head constable Chandar Singh Mandavi and PW-14 Sub Inspector Johncruise Toppo have duly supported the prosecution case and stated as to the manner in which the entire proceedings were conducted under the NDPS Act, the appellant was found in possession of the contraband which was confirmed to be *Ganja* after chemical examination by FSL.

13. It cannot be stated as a rule of law that a police officer can or cannot be a reliable in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in favour of a police officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.

14. Ordinarily, the public at large show their disinclination to come

forward to become witnesses. If the testimony of the police Officer is found to be reliable and trust worthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the Court finds the evidence of the police officer as unreliable and untrustworthy, the Court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [**Pramod Kumar V. State (GNCT) of Delhi** reported in **AIR 2013 Supreme Court 3344**]. The same principle of law has been reiterated by the Supreme Court Judgment in the matter of **Baldev Singh Vs. State of Haryana** reported in **(2015) 17 SCC 554** and in paragraph 10 it has been observed as under:

“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”

15. In the recent judgment dated 26.10.2020 delivered by the Hon'ble Supreme Court in the matters of **Rajesh Dhiman vs State of Himachal Pradesh** in **(CRA No.1032 of 2013)** and **Gulshan Rana vs State of Himachal Pradesh** in **(CRA No.1126 of 2019)**, where the accused/appellants were acquitted of the charge under Section 20 of the NDPS Act by the trial Court and later convicted under the said Section by the High Court, affirming the judgment of conviction of the High Court, the Apex Court referring to its earlier various judgments holding the field, held that non-examination of the independent witnesses or independent

witnesses turning hostile would not *ipso facto* be fatal to the prosecution case if the evidence of the official witnesses/police personnel remain impeccable and free from the suspicion of falsity.

16. In the present case, also, though independent witnesses namely Sanni Bharti and Raghuveer Dongar have not supported the prosecution case but other witnesses i.e PW-2 Sub Inspector- Surendra Singh Baghel, PW-3 Constable- Hemant Kumar Thakur, PW-5 Asst. Sub Inspector- Dhurvbeer Ram Yadu, PW-6 Asst Sub Inspector- Jagdish Singh Thakur, PW-7 Asst Sub Inspector- Babulal Das, PW-8 Constable No. 1186- Narayan Kumar, PW-9 Asst Sub Inspector- Kanchan Thomas, PW-10 Constable- Vinod Netam, PW-11 Constable- Chaituram Netam, PW-12 Station House Officer/Inspector- Shri Saeed Akhtar, PW-13 Head Constable- Chandar Singh Mandavi and PW-14 Sub Inspector Johncruise- Toppo have duly supported the prosecution case and unequivocally stated about the search and seizure of the contraband. As per evidence available on record, defence has utterly failed to elicit anything from them which could suggest that they were in any manner inimical to the accused or were interested in false implication of the accused in the said crime; their evidence appear to be trustworthy and supported by the documentary evidence on record. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the Police personnel.

17. Thus, regard being had to the overall evidence on record, oral and documentary, complicity of the accused/appellant in crime in question stands proved beyond all reasonable doubt. Being so, conviction of the appellant under Section 20 (b) (ii) (B) of the NDPS Act awarded by the Special Judge appears to be just and proper warranting no interference and the same is affirmed by this Court.

18. As regards the sentence, considering the facts and circumstances of the case, the fact that the incident took place in the year 2017, the appellant is a poor woman of 38 years having three children, she has no criminal antecedents and she is the first offender, she is remained in jail during trial and appeal for about 1 year 10 months 17 days, keeping in view of the judgment of the Hon'ble Supreme Court in the matter of ***George Pon Paul Vs. Kanagalet and Others, (2009)13 SSC 478*** wherein considering the fact that *fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone*, this Court is of the opinion that in the present case also no useful purpose would be served in keeping the appellant behind the bars any more and the ends of justice would be served if she is sentenced to the period already undergone by her and the fine amount is reduced from Rs. 10,000/- to Rs. 5,000/- with default sentence of one month.

19. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 20 (b) (ii) (B) of the NDPS Act, she is sentenced to the period already undergone by her. The fine amount of Rs.10,000/- imposed by trial Court is reduced to Rs.5,000/-. In default of payment of fine, the appellant shall have to suffer additional R.I. for one month.

20. The appellant is reported to be in jail, therefore, she be released forthwith after deposit of fine amount imposed by this Court. Fine amount, if any, already deposited by the appellant shall be adjusted accordingly.

Sd/-
Gautam Chourdiya
Judge

Nadim